

Worker's Compensation Advisory Council
Meeting Minutes
Madison, Wisconsin
July 28, 2003

Members present: Mr. Bagin, Mr. Beiriger, Mr. Buchen, Ms. Connor, Ms. Gebheim, Mr. Gordon, Ms. Huntley-Cooper, Mr. Kent, Mr. Newby, and Mr. Welnak

Excused: Ms. Vetter

Staff present: Mr. Conway, Mr. O'Malley, Ms. Knutson, and Mr. Shorey

1. **Call to Order.** Ms. Huntley-Cooper convened the meeting in accordance with Wisconsin's open meetings law.

2. **Minutes.** Mr. Welnak moved adoption of the minutes of the June 16, 2003 meeting; Mr. Bagin seconded the motion. The motion was unanimously approved.

3. **Response to Council Information Requests:**

Health cost containment procedures: Mr. O'Malley indicated that information was gathered on medical cost containment procedures in other states for hospital, prescription drugs, prosthetic devices and durable medical equipment charges. The Worker's Compensation Research Institute (WCRI) study was reviewed. In addition, the Division contacted 12 states (not New York, Texas, California, Maine, Rhode Island or Louisiana). For reducing hospital charges, either a fee schedule or complicated reimbursement formula was used by most states surveyed. For prescription drug charges, there was a trend in 8 states to use the average wholesale price plus a dispensing fee, which ranged from \$4 to \$6 per prescription. Red Book was commonly used to determine the average wholesale price. In Minnesota, a \$5 dispensing fee was allowed. For prosthetic devices or durable medical equipment, one-half of the states surveyed used the Healthcare Financing Administration (HCFA) fee schedule plus an additional amount. For states where the allowed HCFA fees were relatively low, the state allowed an increased amount. The St. Anthony Relative Value Guide was used in Wyoming and Oklahoma. Two states specifically advocated changing the dispensing fee to encourage the use of generic drugs. In Kansas, there was a \$5.14 dispensing fee for generic drugs versus a \$4 dispensing fee for brand name drugs. Mr. Kent inquired whether there were any differences in geographic regions of the United States. Mr. O'Malley indicated that in Alaska there is a concentrated population in a few cities. In rural areas fees are not limited due to higher operational costs in those areas. Ms. Knutson stated that in North Dakota, the fee schedule provides for higher reimbursement rates for rural hospitals due to the higher cost of doing business. Mr. O'Malley stated that in Minnesota, hospitals with less than 100 beds are allowed a higher reimbursement rate. Mr. Bagin indicated that a subcommittee should be formed

to look at prescription drug and durable medical equipment reimbursements. Mr. O'Malley indicated that the Department could obtain copies of the Red Book publication for wholesale prescription drug prices.

Advance Practice Nurse Prescribers (APNP): Mr. O'Malley provided the Council members with a letter authored by Attorney Wayne Austin with the Department of Regulation and Licensing. Mr. O'Malley clarified that prescribing controlled substances is limited by law not only for APNPs but physicians as well. APNPs could be added to the list of providers for reimbursement for the medical treatment of injured workers. Physician Assistants (PA) must practice under the direct supervision of physicians and could be added as providers also. If a PA writes a prescription, a physician must review the chart. Mr. Bagin indicated that the billing codes used for treatment administered by APNPs and PAs are the same as those used for physicians. Insurers therefore would be paying the same for care rendered by all three providers. Mr. Gordon stated that for some billing codes, there is a sub-code, which indicates that the treatment is provided by an APNP. Mr. Dick Faust from the Wisconsin Academy of Physician Assistants clarified that PAs are held to the same standard of care as physicians and that overhead costs are the same whether the care is rendered by a physician or a PA. Mr. O'Malley clarified that dentists can render an opinion on diagnosis and need for treatment but not disability, which includes causation and extent of disability. Mr. Faust indicated that when comparing urgent care treatment versus emergency room treatment, Medicaid reimburses PAs at the same rate and Medicare allows a discounted fee to PAs. The Council unanimously agreed to amend Wis. Stat. §§102.17(1)(d) and 102.42(2)(a) to provide that APNPs and PAs have the same status as dentists.

Loan program: Mr. Conway reported that the Veterans Administration has a subsistence aid grant program that is paid over 12 months and the veteran has 12 months to repay the loan. Issues to consider in starting a loan program include the interest rate, whether the loan would be secured or unsecured, the default rate and funding source. Mr. Newby indicated that the issue of a loan program would be discussed in caucus.

Work Injury Supplemental Benefit Fund: Mr. Shorey reported that the Fund had a \$4.3 million balance. There are no longer direct payments into the Fund by carriers or self-insured employers for a 7% interest credit. The carrier or self-insured employer can make advance payments without an interest credit. There have been higher than expected payments into the Fund due to advance payments. The Fund balance in 2007 will be down to \$3 million if there is no increase in payments into the Fund. Mr. Shorey proposed the following options:

1. Take no action now. The Division encourages the Council to address the Fund balance issue. Increases in supplemental benefits from the last agreed upon bill have impacted the Fund by increasing payments to injured workers in the total amount of \$300,000 per year.

2. Increase revenues.

3. Suspend reimbursement to insurers for supplemental benefit payments. Enacting a moratorium would result in simpler administration for the Division. In the past when the Fund had a higher balance, interest rates were also higher. Mr. Buchen inquired whether the \$5000 payment (under Wis. Stat. §102.49) into the Fund for fatalities is built into premium rates. Mr. Gordon explained that the payment is built into the loss ratio. When the policy expires, all losses are totaled and become part of the loss ratio experience for the employer. This is an indirect penalty to the employer because it affects insurance costs for three years or it may affect the employer's ability to purchase insurance.

Mr. O'Malley indicated that bad faith claim information was provided by the Division at the Council's request. Mr. Bagin inquired whether other states had eliminated benefits for pre-existing disabilities, referencing Wis. Stat. §102.59 (Second Injury Fund). Mr. O'Malley responded that a few states had eliminated the benefit or were attempting to eliminate it. According to the National Chamber of Commerce survey of benefit rates, Nebraska, Connecticut, the District of Columbia and some other states had eliminated the benefit. Mr. Bagin commented that the enactment of the Americans with Disabilities Act (ADA) eliminated the need for Second Injury Fund benefits. Mr. Kent commented that perhaps increasing payments for children under Wis. Stat. §102.49 would be a trade-off for discontinuing payments for pre-existing disabilities from the Second Injury Fund. Mr. O'Malley responded that many states have no limit on payments to children.

4. Correspondence: Mr. Conway indicated that letters had been received from the Wisconsin Medical Society concerning the issues of including APNPs as providers and medical cost containment (i.e. reducing the standard deviation).

In addition, correspondence was received from Senator Dave Hansen expressing concern for situations where the injured employee's medical bills are not paid pending resolution of a worker's compensation dispute. He indicates that pending resolution of the dispute, either the worker's compensation carrier or the private health insurer should pay the medical bills.

Mr. Bagin expressed concern regarding the short notice of scheduled hearings and the shortened time between filing of the hearing application and scheduling hearings. If hearings are scheduled too soon or not enough notice is given in advance of hearing, little is accomplished and a continued hearing is required. The Department's concerns about delays in scheduling hearings are understandable. While scheduling cases within six months of ready status is a good target, the Division should concentrate on prioritizing cases. Mr. O'Malley explained that one of the calendar positions was vacant for several months and the Division was unable to provide the usual 8 weeks advance notice of hearings. However, the Division is working on a number of projects to expedite the scheduling process so that longer notices should be issued within the next few weeks.

5. Determination of Agreed Bill Content: The Council broke into caucus (i.e. closed session) and later reconvened. Mr. Bagin provided the following caucus report.

1. The Council agrees with Department proposal #9, amendment to §102.35(1)(b) relating to rescission of forfeitures.

2. The Council agrees with Department proposal #12 concerning an amendment to Wis. Adm. Code DWD §80.02(2)(h). The Department is requested to draft language providing that the insurer or self-insured employer must specifically communicate to the employee if benefits are not paid, that the claim is being investigated and that the employee has the right to a hearing if benefits are denied.

3. The Council agrees to increase supplemental benefits to employees receiving permanent total disability benefits to a maximum of \$233 per week for dates of injury prior to May 13, 1980. The Council also agreed to increase payments into the Work Injury Supplemental Benefit Fund by increasing assessments on fatalities and amputations to \$10,000 for each (increasing fatality payments from \$5,000 to \$10,000 and amputation payments from \$7,000 to \$10,000).

4. The Council agrees to reduce the medical cost reimbursement rate from 1.5 to 1.4 standard deviations from the mean under Wis. Stat. §102.16(2)(d). The Council will appoint a study committee to look at prescription drug and durable medical equipment costs and future permanent total disability increased benefit payments in addition to supplemental benefit payments.

Mr. Newby indicated that the money saved by insurers and self-insured employers in decreased medical payments would fund the increased supplemental benefits. The Council unanimously agreed to the above statutory and administrative rule changes.

Mr. Newby thanked Mr. Bagin for his many years of service to the Council and his years of commitment to the Wisconsin Worker's Compensation system. Mr. Bagin indicated that he was in the worker's compensation claims business for over 40 years with over 20 years spent on the Council. He enjoyed his service on the Council. The professionalism in the Wisconsin system is much better than in other parts of the country. Ms. Huntley-Cooper expressed her gratitude on behalf of the Department to Mr. Bagin for his years of service. Mr. O'Malley expressed appreciation for Mr. Bagin's commitment to the Council, for his assistance and dedication to the worker's compensation program.

7. Adjournment: Discussion on all agenda items concluded and the meeting was adjourned. The next meeting date has not yet been determined.